2007-05772/

SASKATCHEWAN

FOIP FOLIO

April / May 2006

REPORT F-2006-001
(SASKATCHEWAN CORRECTIONS AND PUBLIC SAFETY)

This Report considered the decision of Saskatchewan Corrections and Public Safety under the *The Freedom of Information and Protection of Privacy Act* (FOIP) to deny access to an applicant to certain records pertaining to a fire investigation. The Department refused to provide access to all records on the basis of section 15(1)(c) [disclose information with respect to a lawful investigation], section 13(2) [information supplied in confidence] and section 29(1) [personal information].

Our office (the OIPC) determined that the government institution had not met the burden of proof with respect to the application of the exemptions in question and accordingly recommended release of the record to the Applicant after certain third party personal information was severed.

Issues examined in this Report include the following:

- What qualifies as a "*lawful investigation*"?
- Does the FOIP Act capture records of an investigation undertaken by a body other than the Office of the Fire Commissioner?
- Does an investigation need to be ongoing for FOIP section 15(1)(c) to apply?
- Were the records in question "*obtained*" from a local authority?
- How does one determine whether information was provided "*in confidence, implicitly or explicitly*"?

This Report can be accessed at www.oipc.sk.ca under the tab *Reports*.

OIPC BROWN BAG LUNCHEON WORKSHOPS

Our office will be continuing our 'brown bag' luncheon series into May with our final luncheon on May 10th and then we will resume the luncheon workshops in September. The workshops are free and open to FOIP and Health Information Protection Act ("HIPA") Coordinators. You are encouraged to bring your 'brown bag' lunch and join us for a discussion of key access and privacy issues. It is necessary to pre-register so we can prepare adequate handouts. To register, call Candace Malowany at 787-8350 or 1-877-748-2298. There will be a handout for each workshop. Each session runs from 12:10 p.m. to 12:50 p.m.

Wednesday, May 10, 2006
in Regina

Severing made easy or at least a lot easier!
Location: Information and Privacy Commissioner
503 – 1801 Hamilton Street, Regina

MANITOBA TAKES A DIFFERENT APPROACH

The Manitoba government has now introduced in that province's Legislative Assembly a bill - Bill 36 *The Youth Drug Stabilization (Support for Parents) Act*. Unlike the new Saskatchewan law, *The Youth Drug Detoxification and Stabilization Act*, the Manitoba law will guarantee that affected youth and their parents will not forfeit their information rights when help is sought by a family. This is accomplished by a section that states "*The Personal Health Information Act will apply to any proceedings under the Act*". As noted in the March FOIP FOLIO, the Saskatchewan version is worded so neither FOIP nor most of HIPA will apply to any information collected, used or disclosed for purposes of that program.

YOU ARE BEING COUNTED!

May 16, 2006, is census day in Canada and Statistics Canada has updated the census process. Statistics Canada will be implementing a new mail out program for questionnaires. You can respond by mail, online or by telephone. All responses go directly to the Ottawa processing centre reducing the number of people with access to your personal information. The new questionnaires include two new questions of interest. The first is a request to make the information you submit publicly accessible 92 years from now. The second involves agreement to access and use your Revenue Canada tax returns for the income portion of the questionnaire. Both questions require your active consent to implement and you can rescind your agreement at any time. Participation in the census is mandatory and your personal information is protected by law.

SASKATCHEWAN LEARNING WEBPAGE IS A GOOD MODEL

Check out the new Privacy Policy on the Saskatchewan Learning webpage. (http://www.sasked.gov.sk.ca/admin/privacy_policy.shtml) This notice appropriately advises that all personal information collected, used or disclosed by the Department will be subject to the relevant law, *The Freedom of Information and Protection of Privacy Act*. The privacy notice refers any person with concerns to the FOIP Coordinator/Privacy Officer for the Department and contact information is provided. The notice also indicates that if a complaint is not resolved satisfactorily at that level, there is a right of appeal to the OIPC and again, contact information is provided. We recommend that all provincial government departments ensure that their web privacy notices reflect the same information. We note that some web pages incorrectly refer complainants to the "*Freedom of Information and Protection of Privacy Office*" in Saskatchewan Justice and further, make no mention of their statutory right to appeal to the OIPC.

YOU DON'T GET SOMETHING FOR NOTHING

If we surveyed shoppers in Saskatchewan, what percentage do you think would admit to having a rewards or loyalty card such as Air Miles or an ESSO Card? Most would probably admit to it without hesitation. Last September, a poll revealed that 97 per cent of Canadians take part in at least one loyalty program[1]. If you think about it, every kind of business from retailers to gas stations are offering incentives if you sign up for these cards. But, have you really considered what is required from you in exchange?

Every time you hand that card to the cashier, the business is collecting your personal information. This information is gold to businesses that analyze shoppers' habits with hopes of using the information for marketing or other purposes down the road. Luckily, as of January 1, 2004, the federal law *Personal Information Protection and Electronic Documents Act* (PIPEDA) applies to all organizations in Saskatchewan engaging in a 'commercial activity' capturing those transactions involving the collection, use, and disclosure of customers' personal information. If you have questions about what personal information a business has of yours or are concerned about what the business does with your personal information, contact the organization's Privacy Officer to discuss. If the Privacy Officer is unreceptive or unhelpful, you can contact the Privacy Commissioner of Canada's office for assistance (Phone: 1-800-282-1376).

What does it matter if someone is keeping track of your every purchase? Well, if you don't mind that someone knows exactly how much of what you eat and when you buy it, then you may have no cause for concern. However, if purchase data is linkable with other data about you, what inferences might be drawn? Food for thought! In the footnoted article, the Privacy Commissioner shares that most Canadian companies generally follow the principles as set out in PIPEDA, but only minimally comply. Is this enough reassurance for you? If you require more information, you could make further inquiries to make sure the company in question does not share its personal information databases inappropriately or sells the data to data brokers.

ALBERTA LAW REVIEW

Alberta Law Review

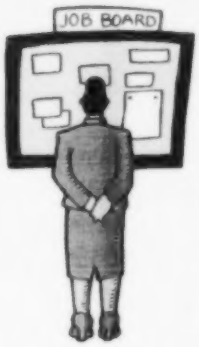
Volume 43, No. 3 (March 2006) of the Alberta Law Review is dedicated to privacy issues. A number of interesting articles will be of interest to privacy officers and FOIP Coordinators. You can order a copy through the following address:

Alberta Law Review
Faculty of Law, University of Alberta
EDMONTON AB T6G 2H5

Phone: (780) 492-5559
Fax: (780) 492-4924
E-mail: info@albertalawreview.com

[1] Weeks, Carly. Loyalty cards do more than just reward. CanWest News Service. April 4, 2006

PIPA AND THE HIRING PROCESS



British Columbia Information and Privacy Commissioner has just produced an interesting document, *PIPA and The Hiring Process*. This tool is intended to assist employers in the private sector who are uncertain what they can and cannot do under that province's *Personal Information Protection Act* (PIPA). Saskatchewan does not have such a private sector privacy law. The federal *Personal Information Protection and Electronic Documents Act* (PIPEDA) that covers most private sector organizations in Saskatchewan does not normally apply to employee personal information. The B.C. document does include useful ideas on what would be a 'best practice' in Saskatchewan businesses. This document addresses the following questions:

- What to do with unsolicited resumes?
- What kinds of personal information can you collect in the hiring process?
- How do you handle reference checks?
- How to ensure information from a Referee remains confidential?
- How to protect personal information collected during the hiring process?

This is available at www.oipc.bc.ca.

In the case of a Saskatchewan public sector employer the applicable law will be Part IV of the *The Freedom of Information and Protection of Privacy Act* (FOIP), and of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). You will also want to consult the Regulations under those laws. You can access both statutes and regulations at our website: www.oipc.sk.ca under the *Legislation* tab.

HEALTH LAW IN CANADA

This periodical has just produced a special privacy issue in Volume 26, Number 3. This includes excellent articles from the editors, Dr. Ruth Collins-Nakai (President of the Canadian Medical Association), and some noted privacy commentators. This periodical is published four times each year. For more information you can contact LexisNexus Canada Inc (http://www.lexisnexis.ca/bookstore/contact.php).

PRIVACY PROTECTION REQUIRED AT ALL TIMES

Most public sector organizations routinely do or should do checks to ensure that electronic information systems are working properly. It is important during such tests to follow appropriate and reasonable measures to ensure that individually identifying information about clients is not available to persons who have no need to know the information for purposes of providing service to those clients. In other words to run a test on an information system, only non-identifiable data should be utilized.